

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Civil Action No.: 03-12560RGS

<hr/> DAVID DEITZEL)	
Plaintiff,)	
vs.)	
SPRINGFIELD TERMINAL)	
RAILWAY COMPANY)	
Defendant.)	
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**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO REOPEN
DISCOVERY FOR THE DESIGNATION OF EXPERTS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 26 (a)(2)(B)**

NOW COMES the Defendant and respectfully states as follows:

1. Plaintiff's Second Amended Answer to Interrogatory No. 21 identifies Dr. Sidney Paly and Dr. Michael Kennedy as expert witnesses expected to testify at trial. The Defendant understands that it will receive a report from each of these experts pursuant to F. R. C. P. 26 (a)(2)(B) and thereafter have an opportunity to depose each of the Plaintiff's experts.
2. Plaintiff's Second Amended Answer to Interrogatory No. 23 identifies Dr. Sidney Paly and Dr. Michael Kennedy and also identifies Dr. Robert Babano [sic]. Defendant understands and believes that the correct spelling for "Babano" is "Babineau." Exhibit A in support of Plaintiff's Motion is a letter dated July 11, 2006 from Robert A. Babineau, Jr., M. D.
3. Inasmuch as Dr. Babineau's letter marked as Exhibit A to Plaintiff's Motion sets forth medical opinion, Defendant respectfully requests that any Order issued by the Court with respect to allowance of the Plaintiff's Motion incorporate within it a provision whereby the Defendant will receive a written report from Dr. Babineau and also be afforded an opportunity to take Dr. Babineau's deposition.
4. Defendant further respectfully requests that to the extent the Court allows Plaintiff's Motion and Plaintiff identifies experts heretofore not identified, that the Plaintiff be required to submit a written report from each of newly identified expert pursuant to F. R. C. P. 26 (a)(2)(B) and thereafter afford the Defendant the opportunity to depose each of the newly identified experts.

By the Defendant,

Springfield Terminal Railway Company,
By its attorneys,

/s/

John J. O'Brien, Jr., Esq.
BBO # 375885
O'Brien & von Rosenvinge, P.C.
27 Mica Lane, Suite 202
Wellesley, MA 02481
(781) 239-9988

Dated: September 6, 2006

CERTIFICATE OF SERVICE

I, John J. O'Brien, Jr., attorney for the Defendant in the within action, hereby certify that I have this day served a copy of

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by mailing a copy thereof, postage prepaid, to:

Ronald M. Davids, Esq.
Davids & Schlesinger, P.C.
40 Washington St., Suite 250
Wellesley, MA 02481

Rudolph V. De George, II, Esq.
Barish Law Offices, P. C.
1601 Cherry Street
Three Parkway - 13th Floor
Philadelphia, PA 19102

/s/

John J. O'Brien, Jr.

Dated: September 6, 2006